

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Implementation of Section 26 of the Cable  
Television Consumer Protection and  
Competition Act of 1992 )

Inquiry into Sports Programming Migration )

PP Docket No. 93-21

**COMMENTS OF**  
**THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association Inc. ("NCTA"), by its attorneys, hereby submits its comments responsive to the Commission's Further Notice of Inquiry regarding sports programming migration.<sup>1</sup> NCTA is the principal trade association of the cable television industry, representing the owners and operators of cable systems serving over 80 percent of the nation's 56 million cable households. NCTA's members also include cable programmers, cable equipment suppliers and others affiliated with the cable television industry. NCTA filed comments and reply comments in response to the initial Notice of Inquiry ("NOI") in this proceeding.<sup>2</sup>

In its initial Notice of Inquiry, the Commission proposed to analyze trends in the carriage of local, regional and national sports programming by broadcast stations, cable programming networks, and pay-per-view services as it was directed to do by Congress in

<sup>1</sup> Further Notice of Inquiry, PP Docket No. 93-21, FCC 94-65, released March 11, 1994 ("FNOI").

<sup>2</sup> See Comments of the National Cable Television Association, Inc., filed March 29, 1993; Reply Comments of the National Cable Television Association, Inc., filed April 12, 1993.

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section 26 of the Cable Television Consumer Protection and Competition Act of 1992. Section 26 directs the Commission to submit both an interim and a final report analyzing those trends, on a sport-by-sport basis, determining whether "migration"<sup>3</sup> had occurred, and making such legislative or regulatory recommendations as the Commission deems appropriate.

As NCTA demonstrated in the initial phase of this proceeding, rather than reducing the ability of the public to receive sports programming, cable has expanded and enhanced the amount of sports programming well beyond what has traditionally been available on broadcast television. Moreover, NCTA showed that cable has provided the public with the opportunity to view particular sports events which broadcasters no longer were carrying. And, as noted in the comments of NCTA and others, as cable and other media provided enhanced sports programming options, the broadcast industry itself increased its sports coverage in almost every category. Finally, the comments made clear that broadcasters still maintain control over all of the major sporting events and still produce highly sophisticated program packages.

In light of these and other comments, the Commission in its July 1, 1993 Interim Report,<sup>4</sup> concluded that, as a general matter, "the number of sports events shown on cable has increased since 1980, but tentatively concluded that this is not associated with a decline in broadcasts of sporting events. In some cases, broadcast exposure has also increased."<sup>5</sup> The Interim Report also drew tentative conclusions with respect to each of the six sports examined by the Commission, finding no migration in the case of

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<sup>3</sup> The Commission defined migration as "the movement of sports programming from broadcast television to a subscription medium (i.e., one for which viewers pay a fee)." FNOI at ¶ 3.

<sup>4</sup> Interim Report in PP Docket No. 93-21, 8 FCC Rcd 4875 (1993) ("Interim Report").

<sup>5</sup> FNOI at ¶ 4. The Commission's analysis focused on four professional sports -- football, basketball, baseball and hockey -- as well as college football and basketball.

professional football and college basketball and no migration at the national level for professional basketball, baseball and hockey, although "isolated and relatively slight" migration at the local level had occurred. FNOI at ¶ 5. Finally, the Interim Report concluded that college football games previously available on broadcast television had not moved to cable but it cautioned that additional information regarding so-called "preclusive" contracts was necessary before it could reach a final conclusion on whether the supply of games to local television stations had been "artificially and unfairly restricted." Id.

The primary purpose of the FNOI is to update the record with respect to the issues examined in the Interim Report. FNOI at ¶ 1. In particular, the Commission sought comment on new contracts that professional and college leagues have recently signed with broadcast and cable networks. The FNOI also sought comment on more general questions raised by the Commission and those in a letter sent to the Commission by the Honorable Edward Markey, Chairman of the Subcommittee on Telecommunications and Finance of the House Energy and Commerce Committee.<sup>6</sup>

The Congressional letter expresses a concern that "the increase since 1980 in cable exhibition of sporting events has been much greater than the increase in broadcast exhibition." With respect to this issue, NCTA agrees with the Commission's suggestion that this disparity was because "there was more 'room for expansion' in cable exhibition than in broadcast exhibition."<sup>7</sup> Indeed, the 1980s witnessed remarkable growth and development of diverse satellite cable services, including national and regional sports networks and pay-per-view services. With the emergence of multi-channel video outlets,

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<sup>6</sup> Letter from the Honorable Edward T. Markey, Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives, to the Honorable James H. Quello, Acting Chairman, Federal Communications Commission, July 22, 1993 ("Congressional letter").

<sup>7</sup> FNOI at ¶ 14.

sports rights holders began looking to new avenues to market their product and maximize their revenues.<sup>8</sup> Today, a combination of technology, economics and consumer preference is driving the distribution of televised sports programming. But there is no evidence that broadcast television is at risk of losing its coverage of major sporting events.

The Commission should reaffirm the findings in its Interim Report and conclude that there is no need for legislative or regulatory intervention into the sports programming arena. The overwhelming majority of the evidence in this proceeding has demonstrated that sports programming is not being siphoned from broadcast television to cable television and that broadcast television has not suffered any diminution in the amount of time it devotes to sports programming. Nothing occurring since the release of the Interim Report suggests that the conclusions drawn therein should be changed.

Nevertheless, NCTA recognizes the Commission's obligation to update the record before issuing its final report in this proceeding. For this reason, NCTA will review closely the parties' responses to the FNOI's specific questions with respect to new sports programming contracts entered into since the release of the Interim Report as well as other information, uniquely within the possession of sports programmers, professional sports leagues or college conferences, solicited by the Commission. Following a review of that information, NCTA expects to file reply comments addressing that information and the extent, if any, to which that information affects the Commission's findings in its Interim Report with respect to the migration of sports programming and the need for legislative or regulatory action in that area.<sup>9</sup>

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<sup>8</sup> Future technological developments, such as video-on-demand, interactivity, viewer-controlled replays and camera angles, and other enhancements, may offer even greater improvement in the delivery of sports to the home.

<sup>9</sup> To the extent any parties argue that the Commission must adopt rules in this area, they must address the Commission's concern regarding the applicability of Home Box Office v. FCC, 567 F.2d 9 (D.C. Cir. 1977) to such an effort. FNOI at ¶ 11. The Home Box Office case plainly raises questions about the Commission's ability to adopt

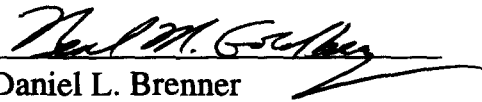
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**CONCLUSION**

For the reasons stated above and in the initial NCTA Comments and Reply Comments in this proceeding, the Commission should reaffirm the conclusions it reached in its Interim Report and further conclude that it need not, and should not, recommend any legislative or regulatory action with respect to sports programming at this time.

Respectfully submitted,

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"anti-siphoning" rules on the current record even in light of changes in circumstances (including the enactment of the 1992 Cable Act) since the Court of Appeals issued its 1977 decision. Should any parties assert that "anti-siphoning" rules should be adopted and address the Home Box Office case, NCTA expects to respond to such assertions in its reply comments.